

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeen G. Kelly.

Pacific Gas and Electric Company

Docket No. ER04-414-000

ORDER ACCEPTING FOR FILING AND SUSPENDING INTERCONNECTION  
AGREEMENTS, SUBJECT TO REFUND, AND ESTABLISHING HEARING AND  
SETTLEMENT JUDGE PROCEDURES

(Issued March 18, 2004)

1. In this order, we accept for filing and suspend for a nominal period, subject to refund, Pacific Gas and Electric Company's (PG&E) Generator Special Facilities Agreement (GSFA), Generator Interconnection Agreement (GIA), and a Supplemental Letter Agreement (SLA)<sup>1</sup> (collectively, Agreements) with Calpine Gilroy Cogen, L.P. (Gilroy). We also establish hearing and settlement judge procedures. In addition, we deny waiver of the Commission's 60-day prior notice requirement and make the Agreements effective March 21, 2004.

2. This order benefits customers because it provides a forum to assure that the rates, terms and conditions for interconnection service are just and reasonable, thus encouraging more competitive markets and increased power supply.

**I. Background**

3. Until November 1, 2002, the Gilroy facility was a qualifying cogeneration facility (QF) under Section 210 of the Public Utilities Regulatory Policies Act of 1978<sup>2</sup> that was interconnected with PG&E's transmission system under an agreement not required to be

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<sup>1</sup> The supplemental letter is intended to be an integral part of the GSFA and GIA. PG&E filing, SLA at 2.

<sup>2</sup> Public Utility Regulatory Policies Act of 1978, 16 U.S. C. § 824a-3 (2000), 18 C.F.R. § 292 (2003).

filed with this Commission.<sup>3</sup> However, Gilroy terminated its QF status. On October 31, 2002, PG&E and Gilroy executed the GSFA, GIA and SLA to govern the already existing interconnection.<sup>4</sup> PG&E filed the Agreements on January 20, 2004.

4. PG&E states that the GSFA governs the special facilities that interconnect Gilroy to PG&E's transmission system and that the GIA establishes the operating protocols and business relationship between the generator and PG&E. These "special facilities," which were installed by PG&E in 1986 and financed by Gilroy, include a 115kV generation tie line approximately 1.9 miles long from PG&E Llagas Substation to Gilroy, and a breaker and line switch 185. PG&E's filing provides for Gilroy to pay monthly cost-of-ownership charges to compensate PG&E for the cost of maintaining these special facilities. PG&E states that credits for the network upgrades are not required, since the Agreements pertain to a generator that has been interconnected for a long time rather than a new generator.

5. PG&E requests waiver of the Commission's 60-day prior notice requirement to permit the GSFA and SLA to become effective on October 31, 2002 and the GIA on November 1, 2002. As a result, PG&E seeks to retroactively charge Gilroy for past cost-of-ownership charges on the special facilities PG&E owns and maintains to interconnect Gilroy.

## **II. Notices and Pleadings**

6. Notice of PG&E's filing was published in the Federal Register, 69 Fed. Reg. 5530 (2004), with interventions or comments due on or before February 10, 2004. Gilroy filed a timely motion to intervene and protest.<sup>5</sup>

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<sup>3</sup> Since Gilroy was a QF and PG&E purchased Gilroy's total output, the California Public Utilities Commission was the relevant state authority exercising jurisdiction over the interconnection and the allocation of interconnection costs. *North Hartland, LLC*, 105 FERC ¶ 61,192 (2003); see also *Western Massachusetts Electric Company*, 61 FERC ¶ 61,182 (1992), aff'd sub nom. *Western Massachusetts Electric Company v. FERC*, 165 F.3d 926 (D.C.Cir 1999).

<sup>4</sup> PG&E states the GSFA was executed May 17, 2001, and the GIA June 8, 2001 although the contracts contained in PG&E's filing are dated October 31, 2002 .

<sup>5</sup> Gilroy states that it is not now taking a position on the lack of transmission credits for network upgrades in PG&E's filing at this time, but that it reserves the right to seek any relief to which Gilroy may be entitled based on future Commission rulings. Motion to Intervene and Protest by Calpine Gilroy Cogen, L.P. at n.1. (Protest).

### **III. Discussion**

7. Pursuant to Rule 214 of the Commission's Rule of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely motion to intervene serves to make the entity that filed it a party to this proceeding.

#### **A. Waiver**

8. Gilroy contends that PG&E has not made a showing of good cause as to why the filings were delayed. Gilroy argues that allowing PG&E to collect for past cost-of-ownership charges would be burdensome and unfair to Gilroy.

9. Consistent with Commission precedent, we will deny PG&E's request for waiver of our prior notice requirement because it has not shown good cause to justify granting waiver.<sup>6</sup> We will thus make the Agreements effective March 21, 2004, after 60 days' notice from the date PG&E made this filing.<sup>7</sup>

#### **B. Cost-of-Ownership Charges**

10. PG&E's filing would impose special facilities costs for the proposed cost-of-ownership charges. Gilroy states that these costs are unsupported and lack sufficient specificity for Gilroy to adequately review.

### **IV. Hearing and Settlement Judge Procedures**

11. PG&E's filing presents a number of issues of material fact that cannot be resolved on the record before us, and are more appropriately addressed in the hearing ordered below.

12. The Commission's preliminary review indicates that PG&E's filing has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, the Commission will accept the proposed Agreements for filing, suspend them for a nominal period, to become effective on March 21, 2004, subject to refund, and set them for hearing and settlement judge procedures.

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<sup>6</sup> See Prior Notice and Filing Requirements Under Part II of the Federal Power Act, 64 FERC ¶ 61,139, clarified, 65 FERC ¶ 61,081 (1993).

<sup>7</sup> Since PG&E has not billed Gilroy under these Agreements, no time value refunds are warranted.

13. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, the hearing will be held in abeyance and a settlement judge will be appointed pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>8</sup> If the parties desire, they may, by mutual agreement, request a specific judge as a settlement judge in this proceeding; otherwise the Chief Judge will select a judge for this purpose.<sup>9</sup> The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for the commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) The Agreements are hereby accepted for filing, as designated, suspended for a nominal period, to be effective March 21, 2004, subject to refund, as discussed in the body of this order.

(B) Waiver of the Commission's 60-day prior notice requirement is hereby denied, as explained in the body of this order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred on the Federal Energy Regulatory Commission by Section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly Sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter 1), a public hearing shall be held concerning the justness and reasonableness of rates, terms, and conditions for interconnection service. However, the hearing will be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (D) and (E) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2003), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in the proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603

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<sup>8</sup> 18 C.F.R. § 385.603 (2003).

<sup>9</sup> If the parties decide to request a specific judge, they must make their request to the Chief Judge by telephone at 202-502-8500 within five days of the date of this order. The Commission's website contains a listing of Commission judges and a summary of their background and experience ([www.ferc.gov](http://www.ferc.gov) - click on Office of Administrative Law Judges).

and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(E) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Chief Judge and the Commission on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter informing the Chief Judge and the Commission of the parties' progress toward settlement.

(F) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding administrative law judge, to be designated by the Chief Judge, shall convene a conference in these proceedings in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss), as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.